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# Kolender v. Lawson

Kolender v. Lawson, 33 CrL 3063 - Terry v. Ohio, revisited.

Police officers were recently confronted by newspaper reports which seemed to say that the United States Supreme Court had prohibited police officers from asking a person to identify himself. These accounts gave the impression that another tool of police work had been taken from the hands of the people whose duty it was to protect society. Because of the confusion surrounding this issue, a look at this decision in order to determine what it means (and what it doesn't) would be helpful.

The case in point in Kolender v. Lawson, No. 81-1320, decided May 2, 1983 before the United States Supreme Court (33 CrL 3063). This case came to the court as a challenge to a California statute which required persons who loitered or wandered on the streets to provide "credible and reliable" identification and to account for their presence when requested to do so by a police officer. In a 7 - 2 decision, the Supreme Court held that this particular statute was "unconstitutionally vague within the meaning of the Due Process clause of the Fourteenth Amendment by failing to clarify what is contemplated by the requirement that a suspect provide a 'credible and reliable' identification." Kolender v. Lawson, 3063.

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The court is very concerned with the words "credible and reliable". The interpretation of this phrase by an officer

> confers on police a virtually unrestrained power to arrest and charge persons with a violation. Id, 3068.

Because the stop-and-identify nature of the statute is modified by the judgment of the officer as to the degree and character of identification necessary rather than specific identification requirements, the court found the statute to be unconstitutionally vague.

In a concurrent opinion, Justice Brennan adds language which indicates that even if the vagueness were cleared up, the statute would not be constitutional under the Fourth Amendment. While the opinion of Justice Brennan does not have the force of law, it does remind us that the law of Terry v. Ohio, 392 U.S. 1, (1968) is still the law of the land.

In Terry, the Supreme Court recognized and limited the stop-and-frisk procedure.

In order to justify a "stop", the officers

> must be able to point to specific and articulable facts, which, taken together with logical inferences, from those facts, reasonably warrant that intrusion. Terry, supra at 21.

In addition, there is a

> narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual..." Terry, supra, at 31.

This is the right to "frisk" or to pat down a subject's outer clothing to determine if weapons are present. Additional procedures are pointed out in Kolender.

> Terry encounters must be brief; the suspect must not be moved or asked to move more than a short distance; physical searches are permitted only to the extent necessary to protect the police officers involved during the encounter; and most importantly, the suspect must be free to leave after a short time and to decline to answer the questions put to him. Kolender v. Lawson, supra 3066, (emphasis added).

Nothing in either Kolender or Terry would prohibit an officer or indeed a private citizen from approaching anyone and requesting identification. However, the subject does not have to respond, or even to remain where he is, and if he does not, then the officer must meet Terry standards to detain the subject even for a short period of time. While a subject may be asked questions concerning identification, the subject has no duty to respond. The law is clearly stated in Terry and quoted in Kolender:

> Of course, the person stopped is not obliged to answer, answers may not be compelled, and refusal to answer furnishes no basis for arrest, although it may alert the officer to the need for continued observations. Terry, supra, at 34 (White concurring).

An officer may still ask for identification from a subject. However, if no identification is forthcoming or if the subject merely walks off, no further action can be taken without additional facts that raise the encounter to a stop-and-frisk or an arrest situation.

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